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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

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501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Charles A. Butler, III
Mobile County Constable, Precincts 39/50
250 Carmel Drive, East
Mobile, Alabama 36608

Constables – Elected Officials –
Deputies – Offices and Officers

There is no authority for a chief
constable of Mobile County.

No public official or person has
supervisory authority over constables
in the purchase of items necessary for
the performance of the constable's
duties.

Dear Constable Butler:

This opinion of the Attorney General is issued in response to your
request.

QUESTIONS

- (1) Is there a Chief Constable of Mobile
County?
- (2) Does a constable have a supervisor who
must sign for the purchase of duty-related items?

FACTS AND ANALYSIS

Your request states that there is a Mobile County constable
referring to himself as the "Chief Constable" of the county. You further
state that some governmental officials are referring to him by this title.
In addition, to purchase certain duty-related items at the "individual

officer price,” several companies require that a law enforcement officer’s superior sign the order form. You have included with your request a copy of a form designed for the purchase of a firearm by an officer in a regular law enforcement agency such as a police department. The form includes a certification, by the officer’s supervisor, of that officer’s employment and that the weapon will be used in the course of official duties.

Constables are statutory officers provided for by sections 36-23-1 through 36-23-9 of the Code of Alabama. ALA. CODE §§ 36-23-1 to 36-23-9 (2013). Section 36-23-1(a) authorizes the election of one constable for each election precinct in a county. ALA. CODE § 36-23-1(a) (2013). None of these provisions makes any designation for constables other than “constable.” In fact, they repeatedly refer to the officials as merely holding “the office of constable.” ALA. CODE § 36-23-1(b) (2013); ALA. CODE § 36-23-2 (2013); ALA. CODE § 36-23-8 (2013). Furthermore, research reveals no local act providing for chief constable of Mobile County. Therefore, a constable has no authority to use such a title.

Nor do the constable statutes address the supervision of constables. Accordingly, though not directly stated, constables act independently. This conclusion is supported by an opinion issued to Honorable J. Keith Nelson, Marion County Constable, dated December 7, 2006, A.G. No. 2007-018. That opinion stated that a police chief may not prohibit a constable from performing a statutorily proscribed duty. *Cf., Mobile Cnty. Constable Regulatory Bd. v. Stewart*, Case No. CV 08-901032 (Mobile County Cir. Ct. March 11, 2009) (declaring as unconstitutional a local act applying to Mobile County, Act 2005-95, that established additional requirements for election and holding of office for constables and created a supervisory board for constables).

Moreover, this Office has considered a similar issue regarding registrars. Opinions to Honorable Doris Hearn, Chairman, Baldwin County Board of Registrars, dated May 4, 2007, A.G. No. 2007-092; Honorable Lesley Vance, Member, House of Representatives, dated July 1, 2004, A.G. No. 2004-171; Honorable William J. Benton, Jr., Attorney, Russell County Commission, dated April 21, 2004, A.G. No. 2004-124; Honorable Jerry C. Pow, Probate Judge, Bibb County, dated April 7, 2004, A.G. No. 2004-112. The *Hearn* opinion explained that this line of opinions stands for the proposition that “the board of registrars supervise themselves.” *Hearn* at 2. The *Benton* opinion is more explicit. In examining the statutory authority for registrars, which, like that for constables, is silent as to supervision, that opinion emphasized that

“neither the probate judge nor any other person or official is charged with supervising the board of registrars.” *Benton* at 3.

It is noted that, although constables may not be subject to day-to-day supervision, they do not operate completely independently. Section 36-23-6 of the Code lists the duties of constables and states as follows:

It shall be the duty of every constable:

(1) To attend the circuit court of the county *when summoned by the sheriff* for that purpose;

(2) To execute and return all summons, executions and other process *directed to him by any lawful authority*;

(3) To pay over moneys collected by virtue of his office to the person entitled thereto; and

(4) To perform such other duties as are or may be required of him by law.

ALA. CODE § 36-23-6 (2013) (emphasis added).

In addition, Rule 4(i)(I)(A) of the Alabama Rules of Civil Procedure provides as follows:

(1) DELIVERY BY A PROCESS SERVER.

(A) By Sheriff or Constable. When process issued from any court subject to the provisions of these rules is to be delivered personally within this state, the *clerk of the court shall deliver or mail the process* and sufficient copies of the process and complaint, or other documents to be served, *to the sheriff or constable* of the county in which the party to be served resides or may be found.

ALA. R. CIV. P. 4(i)(I)(A) (emphasis added).

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This Office has emphasized that section 36-23-6 provides limited powers to a constable. Opinion to Honorable Rodney M. Wolfinger, Russell County Constable, dated August 16, 2005, A.G. No. 2005-178. A constable can only perform some of those powers, such as service of civil process, at the direction of another public official. Opinions to Honorable Ronald F. Lybrand, Calhoun County Constable, dated August 10, 1992, A.G. No. 92-00377; Honorable James L. Craig, Constable, dated April 8, 1985, A.G. No. 85-00292. The court clerk determines whether the sheriff or constable serves any process. Opinion to Honorable Don Siegelman, Secretary of State, dated January 5, 1982, A.G. No. 82-00130. Further, the sheriff can require a constable to perform these duties. Opinion to Honorable Thomas J. Purvis, Mobile County Sheriff, dated August 26, 1981, A.G. No. 81-00543. At least in the purchase of goods for their office, however, constables may act without supervision.

CONCLUSION

There is no authority for a chief constable of Mobile County.

No public official or person has supervisory authority over constables in the purchase of items necessary for the performance of the constable's duties.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

LS/GWB/jj

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